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11
12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
14

15 KATHLEEN HANNI, individually and on
behalf of all others similarly situated,
16 Plaintiff,
17
18 vs.
19 AMERICAN AIRLINES, INC., and DOES 1
through 20, inclusive,
20 Defendants.

CASE NO. C 08-00732 CW

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT OF AMERICAN
AIRLINES, INC.'S OPPOSITION TO
PLAINTIFF'S TO MOTION TO REMAND

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I. INTRODUCTION

Defendant American Airlines, Inc. ("American") opposes Plaintiff Kathleen Hanni's Motion to Remand this putative class action to California state court. American properly removed this action to federal court, and this Court has subject matter jurisdiction over this action pursuant to both the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), and the ordinary diversity jurisdiction statute, 28 U.S.C. § 1332(a)(1), which establishes jurisdiction over Plaintiff's individual claims.¹

American's Opposition to Plaintiff's Motion to Remand is based on Plaintiff's allegations in Plaintiff's Complaint ("Complaint") (Docket No. 1 at p. 6); American's Notice of Removal (Docket No. 1); the Declaration of Michael V. Powell, filed herewith, which authenticates a settlement demand letter from Plaintiff's counsel; and the Declaration of James Wagstaffe, filed in support of American's Notice of Removal (Docket No. 3). American also incorporates the Powell Declaration with the attached Plaintiff's settlement demand letter into this Response to Plaintiff's Motion to Remand.

American requests the Court to consider the Powell Declaration that is filed herewith, insofar as it authenticates the Plaintiff's settlement demand letter, and that settlement demand letter, as amendments to American's Notice of Removal.² Courts, including the United States Supreme Court, have deemed affidavits or other evidence filed in opposition to a motion to remand to be amendments to the removal petition. *See, e.g., Willingham v. Morgan*, 395 U.S. 402, 407 n.3 (1969); *USX Corp. v. Adriatic Ins. Co.*, 345 F.3d 190, 203-05 (3d Cir. 2003); *Gafford v.*

¹Because the Court has diversity jurisdiction over plaintiff's individual claims, the Court has supplemental jurisdiction over the putative class members' claims under 28 U.S.C. § 1367(a). *ExxonMobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 558-560 (2005).

²On March 19, 2008, American formally moved the Court for leave to amend its Notice of Removal, and that motion, along with American's proposed Amended Notice of Removal, remain pending before the Court. (Docket No. 28). By Order entered March 25, 2008, the Court denied American's Application for an Order Shortening the Time for Plaintiff to file her opposition to American's Motion for Leave to Amend its Notice of Removal, but the Court stated in that Order that "Defendant may include in its opposition to Plaintiff's motion to remand any facts and argument related to the letter from Plaintiff to Defendant dated March 3, 2008." (Docket No. 33).

1 *General Electric Co.*, 997 F.2d 150, 164 n.6 (6th Cir. 1993).

2 American has also filed with this Opposition certain Objections to and Motion to Strike
3 Parts of the Declarations of Kathleen Hanni and Paul S. Hudson, plaintiff's counsel, filed in
4 support of Plaintiff's Motion to Remand. American requests the Court to consider and rule on its
5 Objections and Motion to Strike.

6 **II. DISCUSSION**

7 This Court has subject matter of jurisdiction of this action under CAFA and the ordinary
8 diversity jurisdiction statute for the reasons set forth in the Amended Notice of Removal and this
9 Response.

10 **A. Jurisdiction Under the Class Action Fairness Act**

11 **1. Undisputed Elements of CAFA Jurisdiction.**

12 From the allegations in Plaintiff's Complaint, there is no dispute about the following
13 requirements for subject matter jurisdiction under CAFA:

14 (a) There is minimal diversity. Paragraphs 1 and 2 of Plaintiff's Complaint allege that
15 Plaintiff is a citizen of California and defendant American is a Delaware corporation with its
16 principal place of business in Texas. 28 U.S.C. § 1332(d)(2)(A).

17 (b) Plaintiff filed this action as a putative class action under California Civil Procedure
18 Code § 382. *See* Complaint ¶¶ 4-5. 28 U.S.C. § 1332(d)(1)(b).

19 (c) The putative class of unnamed plaintiffs exceeds 100 in number. Indeed, plaintiff's
20 Complaint pleads that the alleged class includes "approximately 12,000 people." Complaint ¶¶
21 4(a), 50. 28 U.S.C. § 1332(d)(5)(B). Plaintiff's lead attorney, Mr. Hudson, filed a declaration in
22 support of plaintiff's Motion to Remand in which he avers that "the number of potential class
23 members is likely to be less than 12,000 based on information learned since the complaint was
24 filed" (Docket No. 21 ¶ 4), but Mr. Hudson's declaration cannot supplant, for jurisdictional
25 purposes, the allegations in Plaintiff's Complaint at the time of removal. *See, e.g., St. Paul*
26 *Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938); *Simmons v. PCR Technology*,
27 209 F. Supp. 2d 1029, 1032 (N.D. Cal. 2002) ("Jurisdictional facts are assessed on the basis of
28 plaintiff's complaint at the time of removal.").

(d) American, the sole defendant, is not a State, State official, or other governmental entity. 28 U.S.C. § 1332(d)(5)(A).

Consequently, these elements of CAFA jurisdiction are established.

2. The Alleged Dispute: CAFA Amount in Controversy.

Plaintiff's argument that the Court lacks subject matter jurisdiction is based entirely on her contention that American has failed to establish that "the matter in controversy exceeds the sum or value of \$5,000,000 in jurisdiction, exclusive of interest and costs," within the meaning of 28 U.S.C. § 1332(d)((2).

Although Plaintiff's Complaint does not allege, in one place, a specific amount in controversy for the putative class she seeks to represent, one reasonably can ascertain an amount in controversy from plaintiff's own allegations in the Complaint. In paragraph 3 of her Complaint, Plaintiff alleges that "the monetary damages at issue in this case are within the jurisdictional requirements of this [California Superior] Court." In paragraph 99, plaintiff alleges that "Plaintiff and those similarly situated have been damaged in an amount which satisfies the jurisdictional limits of this court in an amount to be established according to proof at trial." Complaint ¶ 99. Plaintiff's California Superior Court Complaint was, in California court, an "unlimited civil case," for which the amount in controversy exceeds \$25,000. Cal. Civ. Pro. Code §§ 86, 88; *see Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 688 (9th Cir. 2006). So, if one multiplies the number of "similarly situated" members of the putative class of American passengers alleged in plaintiff's Complaint, which is "approximately 12,000," times \$25,000, the minimum amount in controversy, plaintiff's Complaint places the amount in controversy for her putative class in the hundreds of millions of dollars.³

³This analysis is very similar to the Ninth Circuit's analysis of the aggregate amount placed in controversy by the mass action complaint in *Abrego Abrego*, 443 F.3d at 688-89. In *Abrego Abrego*, however, the Court held that Dow had failed to establish that any one plaintiff had \$75,000 in controversy, which is required under CAFA for a *mass action*, but not for a class action. Compare 28 U.S.C. §1332(d)(11)(B)(i) (stating "except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a) [28 U.S.C. § 1332(a)] with 28 U.S.C. § 1332(d)(2) (which governs class (footnote continued)

1 But assuming those are insufficient allegations of the amount in controversy, American has
 2 shown far more. Plaintiff's Complaint does not plead a specific amount in controversy between
 3 the putative class and American. Neither does the Complaint plead there is any upward limit on
 4 the amount in controversy. Rather, the Complaint pleads for judgment in "an amount to be
 5 established according to proof at trial." Complaint ¶¶ 77, 84, 89, 94, 99 and Prayer for Relief ¶ 1.
 6 Accordingly, under Ninth Circuit precedent, American, as the removing party, must demonstrate
 7 by a preponderance of the evidence that plaintiff's class allegations place in excess of \$5 million
 8 in controversy. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007) (Hanni's
 9 Complaint fits within the "second situation" described in *Guglielmino*); *Abrego Abrego*, 443 F.3d
 10 at 683.⁴

11 American's obligation is only to demonstrate the amount *in controversy*, and nothing else.
 12 As the Seventh Circuit has explained:

13 The question is not what damages the plaintiff will recover, but what amount is "in
 14 controversy" between the parties. That the plaintiff may fail in his proof and the judgment be less
 15 than the threshold (indeed, a good chance that the plaintiff will fail and the judgment will be zero)
 16 does not prevent removal. Once the proponent of jurisdiction has set out the amount in
 17 controversy, only a "legal certainty" that the judgment will be less forecloses federal jurisdiction.
 18 *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005) (CAFA removal).

19
 20 _____
 21 actions and requires only an aggregate amount in controversy).

22 The Third Circuit recently conducted a very similar analysis of the allegations in a plaintiff's
 23 class action complaint and held the CAFA "amount in controversy" satisfied. *Frederico v. Home*
 24 *Depot*, 507 F.3d 188, 198-99 (3d Cir. 2007).

25 ⁴On page 4 of her Memorandum, plaintiff contends that the applicable test is "legal certainty,"
 26 rather than "preponderance of the evidence," citing *Loudermilk v. U.S. Bank Nat'l Ass'n.*, 479
 27 F.3d 994, 1000 (9th Cir. 2007). But as the Ninth Circuit made clear in its later opinion in
 28 *Guglielmino*, 506 F.3d at 699-700, the *Loudermilk* "legal certainty" standard applies only when
 the complaint at issue affirmatively alleges that the aggregate amount in controversy for all
 putative class members is less than \$5 million. Hanni's Complaint does not make that allegation.
 This case is governed by the "preponderance of the evidence" standard. *Guglielmino*, 506 F.3d at
 699.

1 In addition to the analysis of the allegations in plaintiff's Complaint, as set forth above,
 2 there are the other items of evidence in the record before the Court that establish the requisite
 3 amount in controversy under CAFA. On March 3, 2008, only 32 days after American removed
 4 this action to this Court and before any discovery had been done, plaintiff's lead attorney, Mr.
 5 Hudson, sent American an unsolicited settlement demand (Exhibit 1 to Powell Declaration, filed
 6 herewith). That settlement demand establishes *in several ways* that plaintiff concedes that her
 7 Complaint places more than \$5 million in controversy for her class action allegations⁵:

8 (1) The settlement demand establishes a proposed tiered settlement, with passengers
 9 confined more than seven hours receiving \$10,000, and lesser tiers down to \$2,000 for passengers
 10 confined for more than two, but less than four, hours. If one applies *only* the least costly tier, *i.e.*,
 11 the \$2,000 tier, to the 12,000 passengers the Complaint alleges were in the putative class, the
 12 amount in controversy is \$24 million. As set forth above, plaintiff cannot now quibble, for
 13 jurisdictional purposes, with the number of alleged class members pleaded in her Complaint, but
 14 even if one were to cut the number of alleged class members by half, the amount in controversy,
 15 under the least costly reading of plaintiff's settlement demand, would still be \$12 million.

16 (2) The demand letter says Mr. Hudson will "cap" the global settlement amount at \$5
 17 million for this case, and another \$5 million for the *Ray* case, which is a near-identical case he
 18 filed in Arkansas before he filed this *Hanni* action in California.⁶ American has attached a copy of
 19

20 ⁵It is well-established that the plaintiff's evaluation of her own case in a settlement demand is
 21 evidence of the amount plaintiff places into controversy in the action. *See, e.g., Cohn v. Petsmart,*
 22 *Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1032
 23 n. 2 (N.D. Cal. 2002). *Accord, Rising-Moore v. Red Roof Inns, Inc.*, 435 F. 3d 813, 816 (7th Cir.
 24 2006) (plaintiff's counsel's settlement range "estimate is close in spirit to the *ad damnum* in a
 25 complaint; it makes sense to give it the same legal status"); *In re Minnesota Mutual Life Ins. Co.*
 26 *Sales Practices Litig.*, 346 F.3d 830, 834-35 (8th Cir. 2003); *Davis v. Chase Bank U.S.A., N.A.*,
 27 453 F. Supp.2d 1205, 1209 (C.D. Cal. 2006); *Bankhead v. American Suzuki Motor Corp.*, 529 F.
 28 Supp. 2d 1329, 2008 U.S. Dist. LEXIS 965 at *7-8 (M.D. Ala. Jan. 7, 2008); *Osborne v. Sitton*
Motor Lines, Inc., No. 4:07CV-2-M, 2007 U.S. Dist. LEXIS 17076 at *4-5 (W.D. Ky. Mar. 2,
 2007); *Simmons*, 209 F. Supp. 2d at 1032 n.2.

⁶American removed the *Ray* case to the United States District Court for the Western District of
 Arkansas, where it is pending as Civil Action No. 5:08-cv-05025-RTD. In accordance with Local
 (footnote continued)

1 the First Amended Complaint in the Arkansas *Ray* action Exhibit 2 to the Powell Declaration filed
2 with this Response so the Court can see that the *Ray* case involves exactly the same events on
3 December 29, 2006, that are pleaded in the Complaint in this action, and exactly the same
4 purported class of 12,000 American passengers on that date. So, based on the demand letter, there
5 obviously is a minimum of \$10 million in controversy between American and the alleged plaintiff
6 class of its passengers who were diverted and delayed on December 29, 2006, due to
7 thunderstorms at the Dallas-Fort Worth International Airport ("DFW Airport"). Indeed, the
8 settlement demand expressly states "a common fund would be established in the amount of \$10
9 million." Mr. Hudson gets to his \$5 million "cap" in this case only by dividing the total amount in
10 controversy for the same putative class and same alleged events between two near-identical
11 lawsuits.

12 (3) Even if the Court focuses only on the \$5 million "cap" specifically identified for
13 this action in the settlement demand, that amount is *the amount for which plaintiff says she would*
14 *have settled the action*, not the amount *in controversy*. "Parties routinely offer and accept
15 settlement amounts significantly below the total amount placed into controversy by the case in
16 order to avoid the risks that accompany a trial." *Sayre v. Potts*, 32 F. Supp. 2d 881, 888 (S.D. W.
17 Va. 1999). See Judge Easterbrook's discussion of this point in *Rising-Moore v. Red Roof Inns,*
18 *Inc.*, 435 F.3d 813, 816-17 (7th Cir. 2006). Indeed, Mr. Hudson's settlement demand says "[a]
19 settlement at this stage would also relieve AA of the risk of a much larger jury award," and that it
20 also "would relieve the plaintiffs of the risk of an unfavorable outcome based on legal or
21 procedural defenses, or on the merits." Thus, the "capped" settlement demand of \$5 million for
22 this case is a discounted, compromise sum, and is less than the total amount plaintiff believes she
23 could get by way of jury verdict if this case is tried. That larger amount, which clearly exceeds \$5
24 million, is the amount Plaintiff's Complaint places in controversy.

25 Several courts have remarked that a settlement demand by plaintiff "falling just below the
26 _____
27 Rule 3-13, American filed in this Court a Notice of Pendency of the earlier-filed *Ray* case.
28 (Docket No. 11).

jurisdictional threshold tends to suggest that the amount in controversy exceeds this threshold.”
Osborne v. Sitton Motor Lines, Inc., No. 4:07CV-2-M, 2007 U.S. Dist. LEXIS 17076 at *5 (W.D. Ky. Mar. 2, 2007) (citing cases). In this action, if Plaintiff discounted the amount she has placed in controversy by her class allegations by only \$1 to make her class settlement demand for this action, which she “capped” at \$5 million, the requisite amount in controversy exists.

(4) In addition to a \$5 million demand for settling with the putative class in this case, plaintiff’s settlement demand makes demand for “attorney fees of \$250,000 or 10% of the total amount paid out to plaintiffs and class members whichever is greater.” The demand requires that American pay a minimum of \$250,000 in attorneys’ fees, in addition to the \$5 million cap for settling with the putative class. If Plaintiff intended for her attorneys fees to be paid out of a \$5 million settlement with the putative class, there would have been no reason even to mention attorneys’ fees in the letter because American would have no stake or interest in whatever amount the Court might allow would-be class counsel to receive from any \$5 million fund made available for settlement with the putative class.

Plaintiff’s Complaint also clearly pleads for recovery of attorneys’ fees *from American*, in addition to damages for plaintiff and the putative class. “Wherefore, plaintiffs pray for judgment against defendants, and each of them, as follows: . . . For reasonable attorneys fees according to law and proof at trial.” Prayer for Relief ¶ 1.⁷ Plaintiff’s demand for attorneys’ fees is included in ascertaining the amount in controversy for federal jurisdiction. *E.g., Galt G/S v. JSS Scandanavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998); *Simmons*, 209 F. Supp. 2d at 1034-35.⁸

⁷Despite what she prays for in her Complaint, plaintiff seems to argue in her Motion to Remand that she is not legally entitled to recover attorneys’ fees from American. See Plaintiff’s Memorandum p. 3 (Docket No. 22). But she stops short of forever withdrawing the demands in her Complaint for recovery of attorneys’ fees from American.

⁸Plaintiff’s claim in her Complaint for punitive damages must also be counted in ascertaining the amount in controversy. See Complaint ¶ 100 and Prayer for Relief at ¶ 2. *E.g., Bell v. Preferred Life Assur. Society*, 320 U.S. 238, 240 (1943); *Simmons*, 209 F.Supp.2d at 1033). Although plaintiff seems to criticize her own punitive damages claim as “rank conclusory allegations” (see Plaintiff’s Memorandum at p. 3), she does not forever withdraw that claim.

(5) Finally, the March 3, 2008 demand letter lists, as the first matter Mr. Hudson took into account in making plaintiff's settlement demand, "the settlement of the 1999 Northwest Airlines stranding case."⁹ In his declaration filed February 28, 2008 (Docket No. 21), a few days before the settlement demand, Mr. Hudson had already provided American and the Court his report about the Northwest settlement. Mr. Hudson says the Northwest case was a class action "arising out of a stranding and confinement of passengers in Detroit in 1999," and that it is "the only other similar case" of which he is aware. He reports the settlement amounts were between \$1,000 and 2,000 per passenger claim, that there was approximately a class of 7,000, and that the total settlement approximated \$7.15 million.

In determining the amount in controversy in this action, this Court may consider awards or settlements in similar cases. *See, e.g., Simmons*, 209 F. Supp.2d at 1033-34. For whatever reason, Mr. Hudson has provided his report about the Northwest case, which he says is a similar case, for the Court's consideration. If the Court analogizes even from the low end of the settlement range Mr. Hudson reports for the Northwest case, which was \$1,000 per class member, that provides substantial support for the proposition that there is at least \$12 million placed in controversy by this action.

For each of these reasons, the CAFA jurisdictional amount in controversy is established by a preponderance of the evidence in the record before this Honorable Court. Indeed, there is nothing to create a fact question with respect to the evidence American has outlined above. Plaintiff has offered no evidence that her class allegations, in fact, place less than \$5 million in controversy. The most she says is that she does "not know ...the aggregate total of damage claims." *See Hanni Declaration at ¶ 7*. Plaintiff certainly holds open the possibility that she might later contend that the amount she has placed in controversy does, in fact, exceed \$5 million. *See Plaintiff's Memorandum at 5*.

⁹Plaintiff's Motion to Remand reports the Northwest case, settled in 2001, was remanded to state court. Plaintiff's Memorandum at 4-5. CAFA did not become effective until February 18, 2005.

1 Plaintiff cites *Ongstad v. Piper Jaffray & Co.*, 407 F. Supp. 2d 1065 (D.N.D. 2006), in
 2 support of her motion to remand, but that case does not help her. The plaintiff's complaint alleged
 3 unauthorized securities trading losses in one transaction of \$14,702 and mentioned two additional
 4 transactions alleging unspecified damages. *Id.* at 1091. Defendant's proof consisted of the gross
 5 value of assets under management by its North Dakota offices, but the court concluded that there
 6 is "no inherent correlation between the total value of the assets and the amount of damages
 7 sustained as a result of unauthorized transactions." *Id.* at 1092. The plaintiff's state court
 8 complaint alleged that the proposed class would exceed seventy-five, and the defendant provided
 9 no evidence to show the class would exceed one hundred. *Id.* at 1092 n. 4. There was simply no
 10 evidence in *Ongstad* sufficient to prove the CAFA jurisdictional amount.

11 That is not the case here. This Court has CAFA jurisdiction.

12 3. The "Local Controversy" Exceptions to CAFA Jurisdiction Do Not Apply.

13 Plaintiff's Memorandum at 5:28-6:4 and Paragraph 11 of the Declaration of Paul S.
 14 Hudson suggest that it is somehow relevant to this motion whether one third or "even over two
 15 thirds" of the putative class members are citizens of California. This is an attempt to invoke the
 16 local controversy exception to CAFA jurisdiction in 28 U.S.C. §1332(d)(3). However, this
 17 exception requires that the primary defendants are citizens of the State in which the action was
 18 originally filed." 28 U.S.C. §§ 1332(d)(3); 1332(d)(4)(A)(II)(cc); 1332(d)(4)(B). This is not
 19 remotely the case here since American is a Delaware corporation with its principal place of
 20 business in Texas. Plaintiff has the burden to establish the applicability of any of these "local
 21 controversy" exceptions. *See, e.g., Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir.
 22 2007) ("[T]he party seeking remand bears the burden to prove an exception to CAFA's
 23 jurisdiction"). Plaintiff's Complaint alleges that American has "a" principal place of business in
 24 Texas. Complaint ¶ 2. As a matter of law, a corporation may have only one principal place of
 25 business. *See, e.g., Capitol Indemnity Corp. v. Russellville Steel Co.*, 367 F. 3d 831, 835 (8th Cir.
 26 2004); 13B Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE § 3624 at 611
 27 (2d ed. 1984) ("Section 1332(c) clearly requires that every corporation must have one—but only
 28 one—principal place of business."). (Emphasis in original). Accordingly, the allegations of

1 plaintiff's Complaint establish for jurisdictional purposes that American is not a citizen of
 2 California. See also Declaration of Alec Bramlett in Support of American's Opposition to Motion
 3 to Remand filed herewith, which sets forth additional relevant facts establishing Texas as
 4 American's principal place of business. None of the "local controversy" exceptions apply, and
 5 plaintiff's ruminations about whether two-thirds of the American passengers diverted from DFW
 6 Airport and delayed on December 29, 2006, might have been citizens of California simply have no
 7 relevance to any jurisdictional issue.

8 **B. Diversity Jurisdiction Over Plaintiff's Individual Claim**

9 Plaintiff does not deny that diversity of citizenship exists for her individual claims. *See*
 10 Complaint ¶¶ 1-2. Her argument, again, is that American has not proved that her Complaint
 11 places the requisite amount in controversy. For plaintiff's individual claims, the amount in
 12 controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

13 Plaintiff's contention is that she has stated, in her Declaration filed to support her Motion
 14 to Remand, that "her individual damages claim including attorneys' fees and any punitive damages
 15 is less than \$75,000." Plaintiff's Memorandum at 2; *see* Hanni Declaration ¶ 7.¹⁰ Filing a post-
 16 removal declaration purporting to reduce the amount in controversy simply does not work, and it
 17 has not worked for a long time. As the Supreme Court wrote in 1938, "[a]nd though, as here, the
 18 plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the
 19 claim below the requisite amount, this does not deprive the district court of jurisdiction." *Red Cab*
 20 *Co.*, 303 U.S. at 292. *See also Simmons*, 209 F. Supp.2d at 1033 ("Such statements are likely to
 21 manipulate the amount in controversy to secure jurisdiction in the desired court. The court gives
 22 little credence to plaintiff's post-removal statements.").

23
 24 ¹⁰Actually, Hanni's Declaration does *not* say that Hanni *will not accept* damages, attorneys'
 25 fees, and punitive damages exceeding \$75,000. The Declaration says only that "I am *not seeking*
 26 individual damages in this lawsuit in excess of \$75,000 including attorney fees and punitive
 27 damages." (Hanni Declaration ¶ 7, Docket No. 23, emphasis added). Despite what Hanni says
 28 she is "seeking," her Complaint requests the Court, time and again, to enter judgment for damages
 "in an amount to be established according to proof at trial." Complaint ¶¶ 77, 84, 85, 99, 100 and
 Prayer for Relief.

1 Rather, the allegations in Plaintiff's Complaint control, and her Complaint does not limit
 2 the total of her individual claims for damages, attorneys' fees, and punitive damages to less than
 3 \$75,000, which is what she now seeks to do by her post-removal Declaration. The Complaint
 4 states only to the effect that "Plaintiff . . . [has] been damaged in an amount which satisfies the
 5 jurisdictional limits of this court in an amount to be established according to proof at trial."
 6 Complaint ¶¶ 77, 84, 89, 94, 99. Although that amount on the minimum side of the range is
 7 \$25,000, the amount on the maximum side is unlimited.

8 On top of Ms. Hanni's prayers for judgment for her alleged compensatory damages, her
 9 Complaint *also* pleads for judgment for attorney fees and punitive damages to be recovered from
 10 American. Plaintiff's pleading for compensatory "damages" under each of her alleged causes of
 11 action in her Complaint plainly do not include attorneys' fees or punitive damages. *See* Complaint
 12 ¶¶ 77, 84, 89, 94, 99. For three of plaintiff's alleged causes of action, she adds an additional
 13 paragraph that places unlimited punitive damages at issue. *See* Complaint ¶¶ 78, 85, 100. And,
 14 she also requests judgment against American for "reasonable attorneys fees according to law and
 15 proof at trial." *See* Complaint at Prayer for Relief ¶ 3.

16 American has filed the Declaration of Mr. James M. Wagstaffe, an experienced San
 17 Francisco lawyer, which states that in Mr. Wagstaffe's professional opinion, and for the reasons he
 18 states, plaintiff will incur more than \$75,000 in attorneys' fees and expenses in prosecuting her
 19 individual claims prior to the time the Court determines whether this action may be maintained as
 20 a class action. (Docket No. 3). That amount in controversy for attorneys' fees boosts the total
 21 amount in controversy for Hanni's individual claim well over \$75,000, without any consideration
 22 of punitive damages. *See, e.g., Randle v. Smithkline Beecham Corp.*, 338 F. Supp. 2d 704, 711
 23 (S.D. Miss. 2004).¹¹ If one adds any amount for alleged punitive damages at issue -- assume only
 24

25 ¹¹Mr. Hudson's Declaration states that his fee agreement with Ms. Hanni is a contingency fee
 26 agreement and that "she is not expected to incur hourly attorneys' fees." That is not the issue.
 27 The issue is what is the reasonable amount of attorneys' fees the Complaint places in controversy
 28 against being sought against American, and that must be determined by the type of analysis Mr.
 Wagstaffe presents for the Court.

1 \$50,000 -- the amount in controversy again exceeds \$75,000.

2 Plaintiff's settlement demand letter of March 3, 2008, demands \$74,900 for settlement of
3 Ms. Hanni's individual case. As discussed above under American's discussion of CAFA
4 jurisdiction, that demand is for a discounted *settlement* of her claims, and that demand
5 demonstrates that there is a greater amount in controversy. As Mr. Hudson's letter states,
6 settlement of the case now "would relieve the plaintiffs of the risk of an unfavorable outcome
7 based on legal or procedural defenses, or on the merits." If one reasonably placed a value of even
8 \$101 on those risks (which would value the risk at less than 1% of \$74,900), Ms. Hanni's demand
9 for a *settlement* in the amount of \$74,900 places more than \$75,000 *in controversy* for Ms.
10 Hanni's individual case.

11 Accordingly, this Court also has diversity jurisdiction under 28 U.S.C. § 1332(a)(1) over
12 plaintiff Ray's individual claims against American, and supplemental jurisdiction under 28 U.S.C.
13 § 1367(a) for the claims of the putative class members. *ExxonMobil Corp. v. Allapattah Services,*
14 *Inc.*, 545 U.S. 546, 558-560 (2005).

15 **III. CONCLUSION AND PRAYER**

16 American requests that the Court deny plaintiff's Motion to Remand this action to
17 California Superior Court. This Court has federal subject matter jurisdiction in two independent
18 ways, and there is no basis for remand.

19 American also requests the Court to deny plaintiff's premature request for discovery. The
20 discovery plaintiff requests is not relevant to this Court's subject matter jurisdiction. As discussed
21 above, the number of California citizens in the putative class has no bearing on jurisdiction
22 because plaintiff fails to meet the other necessary requirement for the "local controversy"
23 exceptions to CAFA jurisdiction, which is that American must be a citizen of California, and it is
24 not. Furthermore, plaintiff's Complaint pleads the approximate number of members in the
25 putative class, and the Complaint establishes the jurisdictional facts it states. Plaintiff could not
26 destroy this Court's jurisdiction by filing a post-removal amendment, or post-removal evidence,
27 asserting that the putative class is smaller.

1 DATED: April 2, 2008

COOPER, WHITE & COOPER LLP

2
3 By:


Jie-Ming Chou
Attorneys for DEFENDANT AMERICAN
AIRLINES, INC.

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